

Resolution No. R-2010-1496

GRANT AGREEMENT

Project Name: Confluence Park Restoration
Project Completion Date: No later than October 31, 2011

PARTIES TO AGREEMENT:

Commission: The Utah Quality Growth Commission
Address: Governor's Office of Planning and Budget
150 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1027
Fax: (801) 538-1547
Contact name: John Bennett
Email: jbennett@utah.gov

Grantee: Washington County Confluence Park
Address: 197 East Tabernacle
St. George, UT 84770

Telephone: 435 256-6311
Fax: 435 634-5758
Contact name: Bob Sandberg
Email: bob.sandberg@washco.utah.gov

Maximum Grant Amount: \$30,000

Date Agreement Signed: _____, 2010

EXHIBITS

Exhibit A Project Application
Exhibit B Conservation Easement Form or Use Restriction

Grant Agreement Form Restoration.doc

RECITALS

A. The Utah Quality Growth Commission (the "Commission") is an agency of the State of Utah created by the Quality Growth Act of 1999, Utah Code Title 11, Chapter 38.

B. The Commission administers the LeRay McAllister Critical Land Conservation Fund (the "Fund") and is authorized to make grants or loans to local entities, the Department of Natural resources, the Department of Agriculture and Food, or 501(c)(3) charitable organizations for the purpose of preserving or restoring open land and agricultural land.

C. In 1999, the Utah State Legislature created and the Commission implemented a statewide program, pursuant to which eligible entities could apply for money from the Fund for land conservation projects.

D. The Washington County Confluence Park (the "Grantee") submitted a detailed application, a copy of which is attached hereto and incorporated herein by reference as Exhibit A (the "Project Application"). The Project Application contemplates the restoration of the real property described in the Project Application (the "Property").

E. The Commission approved Grantee's Project Application on September 23, 2010, subject to the execution of a detailed grant agreement and approved the form of Use Restriction, as defined below, which is attached as Exhibit B hereto.

F. Grantee has undertaken responsibility for obtaining the match (cash contributions) described in the Project Application within one year of the approval date.

G. Grantee will ensure that the Property shall be held and managed in a manner designed to protect its conservation values, to prevent development that would adversely affect such values, and, where necessary, to ensure appropriate public access.

AGREEMENT

NOW, THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant and Project. The Commission hereby awards to Grantee the sum not to exceed \$30,000, subject to the terms of this Agreement (the "Grant"). The Grant shall be used by Grantee solely to complete the work described in the Project Application, as approved by the Commission (the "Project"). Grantee hereby agrees to use its best efforts to complete the Project according to the timeline outlined in the Project Application, and in no event later than the Completion Date defined in Paragraph 13 below. Grant funds are to be spent only for eligible costs as specified in Paragraph 4 below.

2. Project scope. The Project will not be materially modified by Grantee without the written approval of the Commission.

3. Conditions Precedent to Acquisition and Disbursement. Grantee shall not begin the work described in the Project Application and the Commission shall not be obligated to disburse any funds under this Agreement unless and until the following conditions precedent have been met:

a. Critical Land Use Restriction: The Property acquired with Commission funds shall be held and managed in a manner designed to protect the Property's conservation values, to prevent any development that would adversely affect such values, and where necessary, to ensure appropriate public access. This requirement shall be implemented by inclusion of specific language in a conservation easement (referred to herein as the "Use Restriction"). Each Use Restriction shall be acceptable to the Commission in form and content. All liens, encumbrances or other use restrictions and interests of record which, in the Commission's opinion, are inconsistent with the Use Restriction must be discharged, released or subordinated to the Use Restriction before the Commission shall release its funds for the Grant. The Use Restriction shall be executed in substantially the form attached hereto as Exhibit B. In accordance with the foregoing, the Grantee hereby covenants and agrees with respect to the Use Restriction:

(1) *Recording.* The Use Restriction shall be filed of record with the clerks and recorders of each county in which the Property is located.

(2) *Reserved rights.* The Grantee shall not enter into any agreement with the owner of the Property allowing owner to reserve any rights, other than those set forth in Exhibit B, the Use Restriction, that are inconsistent with the Use Restriction without the prior written approval of the Commission.

(3) *Grantee's Rights.* The Use Restriction shall explicitly permit the Grantee to:

- a) Preserve and protect the conservation values of the Property;
- b) Enter upon the Property at reasonable times and on reasonable notice to the landowner in order to monitor compliance with the terms and conditions of the Use Restriction, provided that Grantee will not unreasonably interfere with the owner's use and quiet enjoyment of the Property;
- c) Prevent any activity on or use of the Property that is inconsistent with the purpose of the easement; and
- d) Require the restoration of such areas or features of the Property that may be damaged by any inconsistent use.

(4) *Prohibitions:* At the Commission's discretion, the Use Restriction may also contain prohibitions on uses of the Property that are inconsistent with the Property's conservation values.

(5) *Extinguishment and Condemnation.* In the event of condemnation or termination, the Commission shall be entitled to receive that portion of the net proceeds of condemnation or sale of the Property, or any portion thereof, that Grantee is entitled to under the terms of the Use Restriction equal to the proportionate value of the Grant funds that were used to pay for the Use Restriction as established at the time of its creation. At the option of the Commission, Grantee may retain the Commission's share of the proceeds, provided that the proceeds shall be used in a manner and for a purpose consistent with the conservation values for which the Grant was made.

(6) *Assignment of Use Restriction.* The Use Restriction may be transferable, but the holder of the Use Restriction may only assign its rights and obligations under the Use Restriction to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulation promulgated thereunder and, if the Use Restriction is a conservation easement, authorized to acquire and hold conservation easements under Utah law. As a condition of such transfer, the holder of the Use Restriction shall require that the purposes the Use Restriction is intended to advance will continue to be accomplished.

(7) *Transfer of Property Interest.* The holder of the Use Restriction will incorporate the terms of the Use Restriction and this Agreement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including without limitation, a leasehold interest. The holder of the Use Restriction further agrees to give written notice to the Commission of the transfer of any interest at least twenty (20) days prior to the date of such transfer.

(8) *Water Rights.* Grantee will assure the Use Restriction contains a clause requiring that the water rights associated with the Property will be retained with the Property to maintain the conservation values of the Property and to accomplish the conservation purposes of the Project.

b. Review of Documents: Grantee will submit the following information for review and approval by the Commission staff:

(1) A detailed budget or accounting (the "Budget") for the Project and all material revisions to this Budget. The Budget will itemize the sources and uses of all funds and other resources necessary to complete the Project, including, but not limited to, itemized restoration costs, payments to landowners, payments or agreements for payment for overhead or other expenses for participating entities (including non-profits, for profits, individuals, cities, towns, counties, and other governmental entities), donations, commissions, contingent fees and similar type expenses, costs, and use of funds. Allowable costs are described in Paragraph 4 herein. Failure to fully and accurately disclose uses of funds in the Budget may, at the Commission's discretion, result in termination of this Agreement and any obligation to provide the Grant or any portion thereof.

(2) Where necessary, written evidence that all permits and approvals required for project completion under applicable local, state and federal laws and regulations have been obtained.

(3) An environmental hazards assessment.

c. Other Conditions. Disbursement shall also be subject to the following other conditions:

(1) No material modifications or delays have been made or experienced (or the Commission has been advised of the modifications or delays and has elected to continue to participate in the funding of the Project);

(2) Matching funding has been received (or the status of efforts to secure matching funding has been disclosed to Commission staff and has been deemed satisfactory by Commission staff); and

(3) The representations made to the Commission in the grant application continue to be true (or, if there have been any material changes, the Commission has been advised of such changes and has assented to them).

e. Waiver. The Commission may waive one or more of the previous conditions to disbursement or may allow satisfaction of one or more of these conditions subsequent to disbursement.

4. Eligible Costs. The following costs are eligible for reimbursement under the terms and conditions of this Agreement. Total reimbursements from the Commission will not exceed the Grant amount.

a. *Restoration Costs*. Up to fifty percent of the combined costs of the following:

Eradicating Tamarisk and Russian Olive.
Revegetating with native plants
Removing standing dead, snags and deadfall
Other restoration expenses agreed to by the commission

5. Payment of Grant. Upon satisfaction of all provisions of the conditions precedent described in Paragraph 3 herein, the Commission shall disburse funds for the Grant. Funds shall be disbursed on a reimbursement basis. Grantee may submit monthly requests for disbursement to the Commission. The request for disbursement shall identify to whom a check is to be made payable, itemize the expenses grantee has incurred on the Project, and state those expenses for which Grant funds are being requested. No more than fifty percent of the combined costs of items described paragraph 4, above, will be paid by the Commission. Total payments by the Commission will not to exceed the Grant amount.

6. Documentation of Financial Transactions. Within sixty days after payment of the Grant, Grantee will submit to the Commission staff a post-disbursement accounting that includes the information required in the Budget noted in Paragraph 3.b.(1) above and a reconciliation of actual to budgeted expenses. This post-disbursement accounting shall itemize the sources and uses of funds for the Project that have been received and expended. In addition, Grantee will submit any other documentation reasonably requested by the Commission.

7. Compliance with Regulatory Requirements and Federal and State Mandates. Grantee hereby assumes responsibility for compliance with all regulatory requirements in all applicable areas, including but not limited to nondiscrimination, worker safety, local labor preferences, preferred vendor programs, equal employment opportunity, use of competitive bidding, and other similar requirements. To the extent permitted by law, Grantee hereby agrees to indemnify,

defend and hold harmless the Commission from any cost, expense or liability for any failure to comply with any such applicable requirements.

8. Publicity and Project Information. Grantee shall acknowledge Commission funding in all news releases and other publicity issued by Grantee concerning the Project. If any events are planned in relationship to the Project, the Commission shall be acknowledged as a contributor in the invitation for the event. The Commission shall be notified of any such events thirty (30) days prior to when they are to occur. Grantee shall cooperate with the Commission in preparing public information pieces, providing slides and photos of the Project from time to time, and providing access to the Property for publicity purposes to the extent allowed by the landowner. The Commission has the right and must be provided the opportunity to use information gained from the Project.

9. Indemnity. Grantee agrees to indemnify, save harmless, and release the State of Utah and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this Agreement which are caused in whole or in part by the negligence of the Grantee's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.

10. Audits of Records. Grantee shall allow State auditors, and State agency staff, access to all the records to this Agreement, for audit and inspection, and monitoring of performance. Such access will be during normal business hours or by appointment.

11. Withdrawal of Commission Funding. The Commission may withdraw its approval of funding to Grantee and cease funding of the Project if, in the Commission's sole discretion, it determines that conditions have occurred which fundamentally change the expectations of the parties; the character of changes to the scope, schedule or timing of the Project have caused it to become materially different from that approved by the Commission; or if there have been delays in the implementation of the Project which, in the Commission's reasonable judgment, make the Project infeasible or impracticable.

12. Grantee's Inability to Complete Project. If Grantee determines with reasonable probability that the Project will not or cannot be completed as reflected in the Project Application, Grantee will promptly so advise the Commission, and cooperate in good faith with respect to alternative solutions to the problem before any further funds are disbursed by the Commission.

13. Completion Date. Grantee shall complete the Project no later than October 31, 2011, which is one calendar year after the date of the Commission's approval of the Project (the "Completion Date"). Prior to the Completion Date, either party may terminate this Agreement for the reasons provided in Paragraph 3 above by providing the other party with written notice.

14. Assignment. Grantee may not assign its rights or delegate its obligations under this Agreement without the express written consent of the Commission. Consent to assign the Grant may be withheld in the sole discretion of the Commission.

15. Future Funding. The Grant only applies to the Project and the Property specifically described in this Agreement. The Commission makes no representations regarding future funding for other properties mentioned or described in the Project Application.
16. Breach. In the event that Grantee breaches any of the terms or conditions of this Agreement, the Commission shall have the following remedies:
- a. Prior to Payment of Grant. The Commission reserves the right to withdraw funding and/or terminate this Agreement.
 - b. After Payment of Grant. The Commission reserves the right to deem Grantee ineligible for participation in future Commission grants, loans or projects, if Grantee defaults in its obligations hereunder. In addition to the foregoing, the Commission shall be entitled to pursue any other remedy available at law or in equity.
17. Good Faith. Both parties have an obligation of good faith, including the obligation to make timely communication of information which may reasonably be believed to be of interest to the other party.
18. Applicable Law. Utah law applies to the interpretation and enforcement of this Agreement.
19. Status of Grantee. The parties acknowledge that the Commission lacks the power and right to direct the actions of Grantee. Grantee acts in its separate capacity and not as an officer, employee or agent of the Commission.
20. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and the balance of this Agreement shall otherwise remain in full force and effect.
21. Time is of the Essence. Time is of the essence in this Agreement.
22. Survival. The terms and provisions of this Agreement shall survive the funding of the Grant and the acquisition of the real property interest by Grantee. Subsequent to the funding of the Grant, Grantee shall have a number of ongoing obligations.
23. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one Agreement.
24. Third Party Beneficiary. The Commission and Grantee hereby acknowledge and agree that this Agreement is intended only to cover the relative rights and obligations between the Commission and Grantee, and that no third party beneficiaries are intended.
25. Construction. Each party hereto has reviewed and revised (or requested revisions of) this Agreement, and therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement.

26. Entire Agreement. Except as expressly provided herein, this Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes in this Agreement shall be valid unless made in writing and signed by the parties to this Agreement.

27. Conflicts in Terms. The Commission has previously approved the form of the Use Restriction attached as Exhibit B. Any conflicts in terms between the terms set forth in this Grant Agreement and Exhibit B, the Use Restriction, shall be resolved in favor of Exhibit B, the Use Restriction.

IN WITNESS WHEREOF, the parties have signed this Agreement on the ____ day of _____, 2010.

UTAH QUALITY GROWTH COMMISSION
LERAY MCALLISTER CRITICAL LAND
CONSERVATION FUND

GRANTEE:
(insert applicant's name)

By: _____
Flint Richards
Chair

By: _____
(name)
(title)

APPROVED:

GOVERNOR'S OFFICE OF PLANNING
AND BUDGET

DIVISION OF FINANCE

By: _____
John Nixon
Director

By: _____
Director